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Date: August 7, 2007

/Stacey Bussey/

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:

Applicant: Raj Bridgeland

Examiner: James H. Zurita

Serial No: 10/624,170

Art Unit: 3625

Filing Date: July 21, 2003

Title: ARCHITECTURE FOR SECURE REVERSE MOBILE COMMERCE

**Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450**

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**APPEAL BRIEF**

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Dear Sir:

Appellant's representative submits this brief in connection with an appeal of the above-identified patent application. If any additional fees are due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [SYMBP152US].

**I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))**

The real party in interest in the present appeal is Symbol Technologies, Inc., the assignee of the present application.

**II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))**

Appellants, appellants' legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))**

Claims 1-40 are pending in the application. The rejection of claims 1-40 is being appealed.

**IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))**

Claim amendments had been made but not entered after the Final Office Action.

**V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))****A. Independent Claim 1**

Independent claim 1 and its corresponding dependent claims relate to an m-commerce system. The system employs a data input component to receive item data that represents an article of commerce (*See* Fig. 1, element 102; Application at pg. 6, ll. 12-15). A coordination component then presents the article of commerce to a vendor for bid (*See* Fig. 1, element 106; Application at pg. 6, ll. 17-22). A location awareness component is provided that tracks the location of the data input component (*See* Fig. 1, element 108; Application at pg. 7, ll. 4-6). A payment component facilitates payment of the article of commerce (*See* Fig. 1, element 110; Application at pg. 7, ll. 11-14).

**VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))****A. Whether Claims 1-6, 8-18, 22-35 and 40 are anticipated under 35 U.S.C. §102(e)**

by Van Erlach (U.S. 2004/0204063).

**B.** Whether claim 7 is unpatentable under 35 U.S.C. §103(a) over Van Erlach in view of Gellman (U.S. 2002/0035536).

**C.** Whether claims 19-21 are unpatentable under 35 U.S.C. §103(a) over Van Erlach in view of Freund (U.S. 2003/0187787).

**D.** Whether claims 36-37 are unpatentable under 35 U.S.C. §103(a) over Van Erlach in view of Edgett *et al.* (U.S. 2004/0034771).

**E.** Whether claim 38 is unpatentable under 35 U.S.C. §103(a) over Van Erlach in view of Grunes *et al.* (U.S. 2002/0113707).

**F.** Whether claim 39 is unpatentable under 35 U.S.C. §103(a) over Van Erlach in view of Hoffberg (U.S. 6,791,472).

## **VII. Argument (37 C.F.R. §41.37(c)(1)(vii))**

### **A. Rejection of Claims 1-6, 8-18, 22-35 and 40 Under 35 U.S.C. §102(e)**

Claims 1-6, 8-18, 22-35 and 40 stand rejected under 35 U.S.C. §102(e) as being anticipated by Van Erlach (U.S. 2004/0204063). This rejection should be reversed for at least the following reasons. Van Erlach does not disclose or suggest each and every element of the subject claims.

A single prior art reference anticipates a patent claim only if it *expressly or inherently describes each and every limitation* set forth in the patent claim. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). *The identical invention must be shown in as complete detail as is contained in the ...*

*claim.* *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Appellant's claimed subject matter relates to a global framework for mobile commerce. The global framework can provide input that allows purchase information, as well as location aware transactions, to be received. In particular, independent claim 1 recites a system comprising *a data input component that receives item data representative of an article of commerce; a coordination component that presents the article of commerce to a vendor for bid; a location awareness component that tracks the location of the data input component; and a payment component that facilitate payment of the article of commerce.* Van Erlach fails to disclose or suggest the claimed subject matter.

Van Erlach appears to disclose examples of various telecommunication and wireless services. Each example provided by Van Erlach is a separate and distinct entity, and as a result relates to separate inventions within the cited reference. In particular, Van Erlach appears to show a personal contact service (*See Paragraph 0026*), a method of sending digital documents (*See Paragraph 0027*), a service that allows a user to receive samples of multimedia content (*See Paragraph 0028*) and a system that provides price information based on location (*See Paragraph 0029*). Van Erlach also shows three additional embodiments, which include a device that allows a business to communicate with customers (*See Paragraph 0030*), a vital sign system (*See Paragraph 0031*) and a system that helps predict sales of media (*See Paragraph 0032*).

Examiner argues that Van Erlach discloses *a data input component that receives item data representative of an article of commerce* at Paragraph 0007. The cited passage relates to a particular example of Van Erlach that details a method for receiving personal introductions. The users can select criteria such as location and meet other individuals that are within a given proximity. For example, a user can be notified when other compatible users are within a given location.

Examiner further contends that Van Erlach discloses *a coordination component that presents the article of commerce to a vendor for bid* at Paragraph 0032 (*See Final*

Office Action dated March 9, 2007, pg. 3). Appellant's representative respectfully disagrees with such contention.

The cited passage relates to a different implementation of Van Erlach that can help predict future prices of media, such as compact discs, books, games, *etc.* By citing Paragraph 0032, Examiner has changed the definition of the term "article of commerce" to media such as books. In Paragraph 0007, the term is defined as dating information. This interpretation differs from the subject claim, which states "*the article of commerce*," referring to the preceding term in the claim, "*an article of commerce*." Furthermore, the cited passage provides no suggestion or motivation to combine the two distinct implementations cited by Examiner in Paragraphs 0007 and 0032. Therefore, Examiner cannot change the definition of the term "article of commerce" to anticipate the subject claim. Consequently, Van Erlach does not disclose or suggest a system comprising *a data input component that receives item data representative of an article of commerce; a coordination component that presents the article of commerce to a vendor for bid; a location awareness component that tracks the location of the data input component; and a payment component that facilitates payment of the article of commerce.*

Furthermore, Van Erlach is also silent with respect to *a payment component that facilitates payment of the article of commerce*, as independent claim 1 recites. Examiner contends that the cited reference discloses the claimed subject matter at Paragraph 0017 (See Final Office Action dated March 9, 2007, pg. 3). Appellant's representative avers to the contrary.

The cited passage relates to a means of creating and maintaining a stock market. Users can enter estimates of a future event in the system. However, the cited passage is silent with respect to facilitating payment of an article of commerce. Entering values that relate to predictions of future events is different than facilitating payment for an article of commerce. When values are predicted, a user predicts; the user does not pay for articles of commerce. As a result, Van Erlach fails to disclose or suggest *a payment component that facilitates payment of the article of commerce.*

In view of the foregoing, it is readily apparent that Van Erlach fails to disclose or suggest appellant's claimed subject matter as recited in independent claim 1 (and

associated dependent claims 2-6, 8-18, 22-35 and 40). Therefore, it is respectfully requested that this rejection be reversed.

**B. Rejection of Claim 7 Under 35 U.S.C. §103(a)**

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Van Erlach in view of Gellman (U.S. 2002/0035536). Reversal of this rejection is requested for at least the following reasons. Claim 7 depends from independent claim 1. Gellman fails to cure the aforementioned deficiencies of Van Erlach with respect to independent claim 1. Accordingly, it is respectfully requested that this rejection be reversed.

**C. Rejection of Claims 19-21 Under 35 U.S.C. §103(a)**

Claims 19-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Van Erlach in view of Freund (U.S. 2003/0187787). It is respectfully requested that this rejection be reversed for at least the following reasons. Claims 19-21 depend from independent claim 1, and Freund fails to address the previously mentioned deficiencies of Van Erlach with respect to independent claim 1. Accordingly, it is respectfully requested that this rejection be reversed.

**D. Rejection of Claims 36-37 Under 35 U.S.C. §103(a)**

Claims 36-37 stand rejected under 35 U.S.C. §103(a) as being unpatentable Van Erlach in view of Edgett *et al.* (U.S. 2004/0034771). This rejection should be reversed for at least the following reasons. Claims 36-37 depend from independent claim 1, and Edgett *et al.* fails to make up for the aforementioned deficiencies of Van Erlach with respect to independent claim 1. Therefore, it is respectfully requested that this rejection be reversed with respect to claims 36 and 37.

**E. Rejection of Claim 38 Under 35 U.S.C. §103(a)**

Claim 38 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Van Erlach in view of Grunes *et al.* (U.S. 2002/0113707). This rejection should be reversed for at least the following reasons. Claim 38 depends from independent claim 1, and Grunes *et al.* fails to cure the aforementioned deficiencies of Van Erlach with respect to

independent claim 1. Accordingly, it is respectfully requested that this rejection be reversed with respect to claim 38.

F. **Rejection of Claim 39 Under 35 U.S.C. §103(a)**

Claim 39 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Van Erlach in view of Hoffberg (U.S. 6,791,472). As noted above, Van Erlach does not disclose or suggest independent claim 1. Claim 39 depends from independent claim 1, and Hoffberg fails to cure the aforementioned deficiencies of Van Erlach with respect to independent claim 1. Accordingly, it is respectfully requested that this rejection be reversed with respect to claim 39.

**G. Conclusion**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [SYMBP152US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,  
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**VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))**

1. An m-commerce system, comprising:  
a data input component that receives item data representative of an article of commerce;  
a coordination component that presents the article of commerce to a vendor for bid;  
a location awareness component that tracks the location of the data input component; and  
a payment component that facilitates payment of the article of commerce.
2. The system of claim 1, the data input component is a wireless portable terminal.
3. The system of claim 1, the data input component uploads a shopping list to the coordination component, which coordination component receives the bid for transacting the article of commerce.
4. The system of claim 1, the data input component downloads item information from at least one of an appliance and a computer.
5. The system of claim 1, the data input component is in continuous communication with the coordination component.
6. The system of claim 1, the data input component communicates information using a virtual private network.
7. The system of claim 1, a user of the data input component specifies a price range for a list of the articles of commerce, in response to which the coordination component receives one or more of the bids to transact the list.
8. The system of claim 1, the data input component locates the article of commerce via RF backscattering.

9. The system of claim 1, the data input component facilitates receiving the item data by at least one of manual input, a dataform scanning system, an image capture system, an audio input system, a magnetic reading assembly, and an RF transponder reading assembly.

10. The system of claim 1, the location awareness component includes at least one of a GPS system, a general packet radio services network, and a RTLS architecture.

11. The system of claim 1, the coordination component facilitates communication of awareness data to both the data input component and a vendor.

12. The system of claim 11, the awareness data communicated to the data input component provides at least one of notification that the vendor is located nearby, and a name and/or an address of the vendor.

13. The system of claim 11, the awareness data communicated to the vendor provides at least one of identification of the user of the data input component and notification that the data input component is located nearby.

14. The system of claim 11, the awareness data facilitates pushing marketing information to the user of the data input component, which marketing information is targeted to the user.

15. The system of claim 1, the coordination component is disposed at least one of remotely on a global communication network and a local backoffice network.

16. The system of claim 1, the coordination component coordinates inter-component functions between the data input component, the location awareness component, and the payment component.

17. The system of claim 1, the payment component provides secure communication using at least one of a biometric, radio frequency identification (RFID) data, and an article-of-commerce dataform.

18. The system of claim 1, the payment component distinguishes selection of a first article of commerce from a second article of commerce by processing both RFID data and dataform data of the first article of commerce.
19. The system of claim 1, the payment component facilitates secure communication of item data via a secure key cryptographic engine.
20. The system of claim 19, the engine receives as an input at least one of a manufacturer's key, a retailer's key, a unique item ID, and a locate command.
21. The system of claim 19, the engine outputs at least one of a product lookup code and a set/reset password.
22. The system of claim 1, the data input component outputs at least one of a map and location information that indicates the location of the article of commerce in a store.
23. The system of claim 1, the data input component receives via the coordination component, item information associated with the article of commerce.
24. The system of claim 1, the coordination component retrieves item information associated with the article of commerce from a vendor data resource, and downloads the information to the data input component for presentation to the user.
25. The system of claim 1, the coordination component manages a transaction between a user of the data input component and a vendor selected to provide the article of commerce.
26. The system of claim 1, the security component facilitates at least one of deactivation and activation of an RFID tag associated with the article of commerce when the data input component reads RFID tag data.

27. The system of claim 1, the payment component authenticates the data input component to a store network.
28. The system of claim 1, the location awareness component tracks the data input component in a wide area network and a local area network.
29. The system of claim 1, the payment component utilizes electronic article surveillance (EAS) technology with bi-stable and resettable EAS data in an RFID tag.
30. The system of claim 1, the location awareness component updates a vehicle location tracking system to present a location of the vendor offering the bid.
31. The system of claim 1, the location awareness component updates the data input component with store information of a store as the data input component passes within range of a compatible store communication system.
32. The system of claim 31, the data input component notifies a user that the article of commerce is present in the store.
33. The system of claim 31, the data input component automatically notifies a user of a location of the article of commerce in the store.
34. The system of claim 1, the location awareness component facilitating synchronization of data of the data input component with a second data input component over a wireless personal data network.
35. The system of claim 1, the coordination component downloads multimedia content related to the article of commerce to the data input component in response to the item data being received.

36. The system of claim 1, the data input component transmits a unique password to a tag of the article of commerce to facilitate payment for that article of commerce.

37. The system of claim 36, the tag is an RFID tag that compares the unique password with a password of the RFID tag.

38. The system of claim 36, the tag is at least one of received programmed with the password and programmed with the password at a time of source marking.

39. The system of claim 1, the payment component includes a communication process that is prioritized according to a bandwidth provisioning architecture.

40. The system of claim 1, the data input component is one of a cellular telephone and a connected person data assistant.

41.-111. (Cancelled)

**IX. Evidence Appendix (37 C.F.R. §41.37(e)(1)(ix))**

None.

**X. Related Proceedings Appendix (37 C.F.R. §41.37(e)(1)(x))**

None.